

REMARKS

Reconsideration of the above-identified patent application in view of the amendment above and the remarks below is respectfully requested.

Claims 11 and 42 have been canceled in this paper. Claims 19 and 41 have been amended in this paper. No claims have been added in this paper. Therefore, claims 19, 21-22, 24, 32, 37, 41 and 44-47 are pending and are under active consideration.

Claims 11, 19, 21-22, 24, 32, 37, 41-42 and 44-47 stand rejected under 35 U.S.C. 103(a) “as being unpatentable over Bone (4,039,078) and Mori et al. (6,433,106).” In support of the rejection, the Patent Office states the following:

Bone ‘078 discloses a length of continuously connected fastener stock comprising: first and second side members (60A and 60B); and a plurality of cross-links (60C) interconnecting said first and second side members. The side members have an augmented transverse cross-sectional size. Bone ‘078 discloses (column 6, lines 17-21 and lines 29-35) that the side members and the cross-links may take many forms such as oval, triangular, octagonal, circular, etc. See Figures 1-9 embodiments. Bone ‘078 does not appear to teach the specific shape of the fasteners and the process of using Rotary molding. As admitted by applicant cross-links that have both a flat surface and an arcuate surface are well known in the art. (Figures 1-6 embodiment of the instant application).

Therefore, with respect to the shape and size of the side members and cross-links it would have been an obvious matter of design choice to modify the shape and size of the side members and cross-links in view of the teaching of Bone ‘078 and since such a modification would have involved a mere change in shape and size of a component. A change in shape and size is generally recognized as being within the level of ordinary skill in the art. *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966) and *In re Rose*, 105 USPQ 237 (CCPA 1955).

With respect to claims 11, the determination of patentability in a product-by-process claim is based on the product itself, even though the claim may be limited and defined by the process. That is,

the product in such a claim is unpatentable if it is the same as or obvious from the product of the prior art, even if the prior product was made by a different process. *In re Thorpe*, 777 F.2d 695, 697, 227 USPQ 946, 966 (Fed. Cir. 1985).

A product-by-process limitation adds no patentable distinction to the claim, and is unpatentable if the claimed product is the same as a product of the prior art. Products by Process claims are NOT limited to manipulations of the recited steps only to the structure implied by the steps.

Furthermore, Mori '106 teaches that rotary molding of plastics is a known alternative to injection molding, blow molding, extrusion molding, or other molding processes, see column 6, lines 43-57. Therefore, even if "rotary molding" results in different structural characteristics of the end product than other molding methods, it still would have been *prima facie* obvious at the time the invention was made to use "rotary molding" in Bone '078 as claimed since Mori '106 teaches that "rotary molding" is recognized as a useful technique for forming plastics.

Inasmuch as applicant has not indicated a reference point with respect to the direction and location of the transverse cross-section, it is believed that any transverse cross-section through the side member will inherently provide a flattened surface.

Later in the Office Action, the Patent Office states the following:

Applicant's arguments filed March 23, 2005 have been fully considered but they are not persuasive. As admitted by applicant cross-links and side members that have both a flat surface and an arcuate surface are well known in the art. (Figures 1-6 embodiment of the instant application).

Therefore, with respect to the shape and size of the side members and cross-links it would have been an obvious matter of design choice to modify the shape and size of the side members and cross-links in view of the teaching of Bone '078 and since such a modification would have involved a mere change in shape and size of a component. A change in shape and size is generally recognized as being within the level of ordinary skill in the art. *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966) and *In re Rose*, 105 USPQ 237 (CCPA 1955).

Contrary to applicant's argument the side members of Bone '078 [do] in fact have an augmented transverse cross-sectional size. Inasmuch as applicant has not indicated a reference point with respect to the direction and location of the transverse cross-section, it is believed that any transverse cross-section through the side member will inherently provide a flattened surface.

Products by Process claims are NOT limited to manipulations of the recited steps only to the structure implied by the steps. Applicant has not come [forward] with evidence establishing an unobvious difference between the claimed product and the prior art product. A statement or argument by the attorney is not factual evidence. See MPEP 716.01.

As a practical matter the Patent Office is not equipped to manufacture products by the myriad of processes put before it and then [obtain] prior art products and [make] physical comparisons therewith. *In re Brown*, 173 USPQ 685, 688 (CCPA 1972).

Insofar as the subject rejection pertains to claims 11 and 42, the rejection is moot in view of Applicants' cancellation herein of these claims. Insofar as the subject rejection pertains to claims 19, 21-22, 24, 32, 37, 41 and 44-47, Applicants respectfully traverse the subject rejection.

Claim 19, from which claims 21-22, 24, 32 and 37 depend, has been amended herein and now recites "[a] length of continuously connected fastener stock comprising:

(a) first and second side members; and
(b) a plurality of cross-links interconnecting said first and second side members, each of said cross-links having a length, a flat surface and an arcuate surface;
(c) wherein said first side member is shaped to extend transversely beyond said flat surface of said cross-links in a direction away from said arcuate surface of said cross-links and wherein said first side member is generally circular with at least one flattened surface when viewed in transverse cross-section taken in a direction along the length of said cross-links."

Claim 19 is patentable over the applied references because the applied references, taken individually or in combination, fail to teach or to suggest a length of continuously connected fastener stock having the recited structure. More specifically, the applied references do not teach or suggest a length of continuously connected fastener stock in which, among other things, a first side member is shaped to extend transversely beyond the flat surface of cross-links in a direction away from the arcuate surface of the cross-links and wherein the first side member is generally circular with at least one flattened surface when viewed in transverse cross-section taken in a direction along the length of the cross-links.

Neither Bone nor Mori teaches or suggests a side member that is generally circular with at least one flattened surface when viewed in transverse cross-section taken in a direction along the length of the cross-links. Moreover, nothing in the prior art would have motivated one of ordinary skill in the art to have modified the side members of Bone to provide the claimed shape.

Therefore, for at least the above reasons, Applicants respectfully submit that the Patent Office has failed to establish a prima facie case of obviousness with respect to claim 19.

Claim 41 has been amended herein and now recites "[a] length of continuously connected fastener stock comprising:

- (a) first and second side members wherein said first side member is generally circularly shaped with a pair of flattened surfaces in transverse cross-section; and
- (b) a plurality of cross-links interconnecting said first and second side members, each of said cross-links having a flat surface;
- (c) wherein said first side member is shaped to extend transversely beyond said flat surface of said cross-links with an arcuate surface."

Claim 41 is not rendered obvious over the applied references for at least the reason that the applied references do not teach or suggest a length of continuously connected fastener stock comprising, among other things, a first side member that is generally circular with a pair of flattened surfaces in transverse cross-section. Bone fails to teach this limitation, and Mori fails to cure this deficiency in Bone.

Therefore, for at least the above reasons, Applicants respectfully submit that the Patent Office has failed to establish a prima facie case of obviousness with respect to claim 41.

Claim 44, from which claims 45-47 depend, recites "[a] length of continuously connected fastener stock comprising:

- (a) first and second side members, wherein said first side member is generally circular in transverse cross-section; and
- (b) a plurality of cross-links interconnecting said first and second side members, each of said plurality of cross-links asymmetrically bisecting said first and second side members."

Claim 44 is not rendered obvious over the applied references for at least the reason that the applied references do not teach or suggest a length of continuously connected fastener stock comprising, among other things, a circular side member and a plurality of cross-links asymmetrically bisecting said circular side member. Instead, Bone discloses cross-links that **symmetrically** bisect a side member. Mori fails to cure this deficiency of Bone.

Therefore, for at least the above reasons, Applicants respectfully submit that the Patent Office has failed to establish a prima facie case of obviousness with respect to claim 44.

Accordingly, for at least the above reasons, the foregoing rejection should be withdrawn.

In conclusion, it is respectfully submitted that the present application is now in condition for allowance. Prompt and favorable action is earnestly solicited.

If there are any fees due in connection with the filing of this paper that are not accounted for, the Examiner is authorized to charge the fees to our Deposit Account No. 11-1755. If a fee is required for an extension of time under 37 C.F.R. 1.136 that is not accounted for already, such an extension of time is requested and the fee should also be charged to our Deposit Account.

Respectfully submitted,

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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on January 6, 2006.

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